



Comptroller General
of the United States
Washington, D.C. 20548

147727

Decision

Matter of: Federal Acquisition Management Training Service
File: B-248871; B-248873
Date: September 28, 1992

Richard E. Batts, Esq., for the protester.
Thedlus L. Thompson, Esq., General Services Administration,
for the agency.
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency has a reasonable basis to cancel purchase orders issued under small purchase procedures where vendor declines to accept purchase orders and leads agency to believe vendor might not enter into performance.

DECISION

Federal Acquisition Management Training Service (FAMTS) protests the cancellation of two purchase orders which had been issued to it by the General Services Administration (GSA) for instructional services. FAMTS contends that the agency acted maliciously and arbitrarily in canceling the purchase orders.

We deny the protests.

By notice dated January 29, 1992, GSA issued a request for quotations (RFQ) for more than 200 courses to be taught between March 30 and October 2. The RFQ was issued under the small purchase procedures as set forth in Part 13 of the Federal Acquisition Regulation (FAR). The protester submitted quotations in response to the RFQ by the February 21 closing date.

In response to the quotations, the agency on April 16 issued purchase order No. GS00C92ACMP308 to FAMTS to provide instructional services in Atlanta, Georgia during June 1-5. On May 5, the agency issued purchase order No. GS00C92ACMP341 to FAMTS for instructional services in Atlanta during June 22-26.

On May 18, FAMTS filed a protest with our Office contending that it should have received purchase orders for other sessions as well. One of these sessions was for instructional services to be provided in Arlington, Virginia from June 1-26.¹ On May 26, a GSA representative asked FAMTS' President, Richard Batts, who according to the purchase orders issued to the firm was to be the instructor, about the "obvious impossibility of performing all three contracts" (two in Atlanta and one in Arlington) at the same time. Mr. Batts states that with respect to the courses to be taught in Atlanta, he responded that "acceptance was by performance and by performance was how I planned to accept." In this regard, Mr. Batts states that he "made it clear . . . that the only reason for not performing under the Atlanta purchase orders would be a conflicting award of the (protested) session." Mr. Batts states further that he pointed out to GSA "there was no requirement in the solicitation or purchase (order) for a written or oral acceptance."

The agency states that by May 26, one of the courses for which FAMTS had received a purchase order had 23 students enrolled, 11 from outside the Atlanta area. Because, in GSA's view, Mr. Batts expressed his position that he was not obligated to teach the courses in Atlanta and declined to confirm that he would, the agency determined that the best course of action would be to cancel the two purchase orders and request new quotations. On May 27, the agency canceled the two purchase orders which had been issued to FAMTS.

FAMTS contends that the cancellations were improper because they were in retaliation for the firm's protest against the issuance of purchase orders for services at Arlington, Virginia.

Although GSA suggests that contracts arose from issuance of the purchase orders such that the cancellations involve contract administration matters not cognizable under our bid protest regulations, under the regulations, a quotation is not an offer and, consequently, cannot be accepted by the government to form a binding contract. FAR § 13.108(a). Therefore, issuance by the government of an order for supplies or services in response to a supplier's quotation does not establish a contract. Id. A contract comes into existence only after acceptance of the order by the supplier. Thus, what we have here is the cancellation of the government's offers prior to acceptance. Since this is

¹This protest was dismissed on June 2 as academic under our file B-248759 after the agency canceled the purchase orders which were the subject of the protest.

a pre-contract matter, we view it as one appropriate for our review rather than as one of contract administration.

The regulations provide that:

"[i]f the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer." FAR § 13.108(c).

Thus, the government may timely cancel purchase orders issued in response to quotations. Just as cancellation of an RFQ must be reasonable, however, see Tony Inqoglia Salami and Cheese, Inc., B-244452, Sept. 23, 1991, 91-2 CPD ¶ 268; Arbor Laboratories, Inc., B-202497, Aug. 24, 1991, 81-2 CPD ¶ 167, so, in our view, must the cancellation of a purchase order issued pursuant to the RFQ.

The protester argues that the cancellations were not reasonable because they were improperly motivated. Specifically, FAMTS complains that the agency acted improperly by questioning its president regarding the protested Arlington, Virginia teaching session. FAMTS concludes that these discussions demonstrate that the agency canceled the purchase orders as punishment for its protest.

We find no merit to this protest. We think it was reasonable for the agency to question FAMTS about its protest of instructional services in Arlington since, if the protest were successful, performance under that contract would apparently require that FAMTS decline acceptance of the purchase orders previously issued to it. The protester itself concedes that it could not perform in accordance with the terms of at least one of the purchase orders that it protested and the purchase orders which were issued to it for instructional sessions in Atlanta. As mentioned above, the protester's president stated that he advised the agency that he might not perform in Atlanta if the firm were to receive the purchase order for the course to be taught in Arlington. We therefore do not think that the record supports FAMTS' view that the agency canceled the purchase orders with the specific intention to injure the protester;

rather, we find that the actions were based on the agency's legitimate concerns that FAMTS would not perform. Under these circumstances, we think the agency had a reasonable basis for the cancellations. We therefore deny the protests.

Robert P. Murphy
for James F. Hinchman
General Counsel